IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9894 of 1997

Between:

Dhunji J.Mistry, S/o. J.D.Mistry.
R/o. 5-9-324, Gunfoundry,
Hderabad.

..... PETITIONER

AND

1 District Collector,
Nampally Road, Hyderabad.
2 Special Deputy Collector, Land Acquisition M.C.H.,
Municipal Corporation Officer, Lower Tank Bund Road,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly a writ of Mandamus declaring the notification in Memo.No. D3/4157/93 dated 02/07/1993 declaration in Memo.No. D3/4157/93 dated 14/07/1994 and the award No.B/251/89 dated 31/01/1997 as illegal, arbitrary and unenforceable as being violative of Sections 4, 6, 11, 11-A of Land Acquisition Act and principles of natural justice and consequently set aside the same.

Counsel for the Petitioner:MR.V.RAVINDER RAO

Counsel for the Respondents : GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

The writ petitioner, Dhunji J.Mistry, had invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ, order or direction more particularly a writ of mandamus declaring the notification in Memo No.D3/4157/93, dated 2-7-1993, declaration in Memo No.D3/4157/93 dated 14-7-1994 and Award No.B/251/89, dated 31-1-1997 as illegal, arbitrary and unenforceable as being violative of Sections 4, 5, 11 and 11-A of Land Acquisition Act and principles of natural justice and consequently set aside the same and to pass such other suitable orders.

2. Originally notification under Section 4(1) of the Land Acquisition

Act, 1894, hereinafter referred to as “Act” for the purpose of

convenience, was published in A.P. Gazette dated 17-6-1990 in Memo No.D3/4199/89 and the same had lapsed for non-taking of further steps under the Act. Subsequent thereto yet another notification under Section 4(1) of the Act in Memo No.D3/4157/93 dated 2-7-1993 was published in A.P. Gazette on 8-10-1993 and it was published in the local News Papers, Eenadu on 16-11-1993 and in Pledge on 15-11-1993 and the substance of the notification was published in the locality on 11-11-1993. Thereafter requisite draft declaration under Section 6 of the Act in Memo No.d3/4157/93 dated 14-7-1994 was published in the A.P. Gazette on 1-8-1994 and it was published in two News Papers i.e., Citizen (Evening) and Andhra Bhoomi on 2-2-1995 and the substance of the same was published in the locality on 31-1-1995. It was averred that from the above narrative of the dates of publication of draft notification and declaration it is apparent that the respondents had violated the statutory mandate under Section 6 of the Act to the effect that the draft declaration has to be made within one year from the date of publication of the draft notification. The provisions of Section 4 and Section 6 of the Act make it clear that the relevant date of publication for the purpose of computation of the period is the last of dates of such publication and the giving of such public notice. It was further averred that in the present case the last of the date of public notification under Section 4(1) of the Act was 16-11-1993 when it was

published in Eenadu News Paper. The last of the dates of publication of the declaration under Section 6 of the Act was 2-2-1995 when the declaration was published in Citizen and Andhra Bhoomi News papers. Thus it is apparent that the respondents had failed to publish the draft declaration within one year from the date of publication of notification under Section 4(1) of the Act and this lapse on the part of the respondents caused a serious prejudice to the writ petitioner.

3. It was further averred in the affidavit filed in support of the Writ Petition that the notification under Section 4(1) of the Act was issued and published by the 1st respondent who is not competent to do so. Section 4(1) of the Act makes it clear that the appropriate Government shall publish a notification where it appears necessary for the Government to acquire any land for public purpose. The 1st respondent was not empowered or delegated to issue such a notification if the land is required for road widening and hence the impugned proceedings are illegal and unauthorized. It was also further averred that the 2nd respondent issued a notice in Lr.No.B/251/89 dated 15-7-1995 as required under Sections 9(1), 9(3) and 10 of the Act for award enquiry fixing the date of hearing as 4-8-1995 and the writ petitioner appeared before the 2nd respondent through his Counsel and submitted claim petition on 11-10-1995. After submission of the claim petition, no further intimation of the enquiry or proceeding was given and only in January 1997 a notice

dated 18-1-1997 was served on the Counsel for the writ petitioner fixing the date of hearing on 22-1-1997. Thereafter the 2nd respondent seems to have passed an award but no notice of the passing of the award was given to the writ petitioner till the statutory period had lapsed. The proceedings had lapsed on expiry of two years from the date of publication of the declaration by 1-2-1997. Surprisingly the 2nd respondent had served a notice under Section 12(2) of the Act on 2-4-1997 which was dated 17-3-1997. The notice is intended to inform the claimants about the relevant particulars of the award but the 2nd respondent had deliberately chosen to remain silent about the number and date of the award. This vague notice had lent support to the apprehension of the writ petitioner that the 2nd respondent having failed to pass an award within the time prescribed, ante-dated it to cure the defect. The enquiries of the writ petitioner in this regard revealed that the award was dated 31-1-1997 and the writ petitioner filed an application for a certified copy of the award and obtained the same to verify the legality of the award.

4. It was further averred that it is surprising that an award could be passed within 8 days of the last date of award enquiry. The provisions of Section 11 of the Act contemplate a mandatory approval from the Government before the award is passed. From the present standard of functioning of the Government it is impossible to

prepare a provisional valuation statement, get the same approved by the Government and pass the award within such a short time. It was also averred that the award was not passed within the statutory period but by manipulating the record or by not following the statutory mandates the 2nd respondent had managed to make the claimants believe that a valid award is passed. On further enquiry the writ petitioner learnt that the 2nd respondent had sent the provisional valuation statement dated 21-12-1996 in proceedings No.B/251/89 to the 1st respondent which was dispatched from the office of the 2nd respondent on 23-12-1996, but even before an approval was received from the 1st respondent the award was passed on 31-1-1997. It was also further stated that the 2nd respondent appears to have arrived at the value of the property even before the enquiry was completed. The last date of enquiry was 22-1-1997 and one month prior to this date of enquiry i.e., on 21-12-1996 the 2nd respondent had arrived at his conclusion and sent a provisional valuation to the 1st respondent for approval. From this it is apparent that the 2nd respondent had conducted a make-believe enquiry having already come to a conclusion. The opportunity afforded therefore was an empty formality and no weightage whatsoever is assigned to the claim of the writ petitioner. The 2nd respondent made a mockery of the procedure and violated the principles of natural justice and the

procedural mandates of the award enquiry under the Act. It was also further stated that the 2nd respondent had proceeded to pass an award even before the mandatory approval was obtained from the 1st respondent. It is learnt that even till date the 1st respondent had not accorded necessary approval to the provisional valuation statement sent by the 2nd respondent on 23-12-1996 and the provisions of Section 11 of the Act mandates that no award shall be made by the 2nd respondent without the previous approval of the appropriate Government. Only with a view to make the writ petitioner believe that the award is passed within the time stipulated the 2nd respondent had passed an award after expiry of the statutory period of two years from the date of declaration by ante-dating the same and without there being an approval of the competent authority and for this reason also the award passed by the 2nd respondent on 31-1-1997 in Proceedings No.B/251/89 is illegal, arbitrary and violative of the provisions of Sections 11 and 11-A of the Act. It was further averred that as an abundant caution the writ petitioner filed an application on 28-4-1997 seeking to refer the matter to civil Court under Section 18 of the Act since the compensation awarded is inadequate, reserving his right to question the validity and legality of the award since the Civil Court cannot adjudicate these issues. It was also further stated that having served a notice under Section 12(2) of the Act on 2-4-

1997 the 2nd respondent had so far not paid the compensation to the claimants nor referred the matter to the Civil Court and possession of the land also was not taken so far from the writ petitioner. In the said circumstances, the present Writ Petition is filed by the writ petitioner.

5. In the counter affidavit filed specific stand was taken that the Executive Engineer, P.D. VI, M.C.H. in Lr.No.EE/PD.VI/MCH/89, dated 22-5-1989 had sent an acquisition proposal to acquire an extent of 160.44 sq. yards of land for widening of road in H.No.5-9-324 to 326 belonging to Mrs.A.D.Mistry situated on the road leading from Abids Junction to Basheerbagh Junction, opposite to Mahboobia Girls School. On receipt of the above requisition the site was jointly inspected on 4-1-1990 by the then Special Deputy Collector and the representative of the requisitioning Department i.e., the Deputy Executive Engineer, P.D. VI and the Assistant City Planner, Circle VI, MCH and the Survey staff of his office. After completion of joint inspection, the land under acquisition was surveyed by the survey staff following the site plan provided by the requisitioning Department and the Town Survey record. The sub-division record prepared by the surveyors was sent to the Deputy Director (S&SL) Hyderabad for verification and attestation in Lr.No.A2/251/89 dated 31-1-1990 who is the competent authority to attest the area. It was further stated that the Deputy Director (S&LRS) had retransmitted the sub-division records in Lr.No.E/171/90 dated 9-

3-1990 duly attesting to an extent of 160.26 sq. yards, equivalent to 134 sq. matters. In T.S. No.43 and 45, Ward No.51 of Block ‘F’ of Village Nampally. The attested area of 160.26 sq. yards was adopted for acquisition. The draft notification proposal under Section 4(1) of the Act was submitted to the Collector, Hyderabad District in Lr.No.A2/251/89 dated 26-3-1990 for approval. The Collector, Hyderabad District had approved the proposal to an extent of 160.26 sq. yards in Memo No.D3/4194/89 dated 26-5-1990. The substance of draft notification was published in the daily news papers on 28-6-1990 and the enquiry under Section 5-A of the Act was commenced on 22-7-1990 which was concluded on 31-10-1990 over-ruling the objection of the writ petitioner. The award enquiry which was started on 27-7-1990 was concluded on 22-7-1990. After the conclusion of the award enquiry, further formalities under the Act were completed and the award was about to be passed but the requisitioning Department did not provide detailed plan of the affected structures to the Executive Engineer, Roads and Buildings for preparation of structure valuation. Meanwhile the draft declaration had lapsed on 4-1-1993 since the award was not passed within two years of statutory period as per the Act. The requisitioning Department vide Letter dated 16-1-1993 was informed that the draft declaration had lapsed and requested to inform whether the land is still needed for road widening or not. The requisitioning Department in

Lr.No.MCH/EE/PD.VI/93 dated Nil which was received on 5-6-1993 had informed that the land is still required and on receipt of the above letter, a fresh draft notification under Section 4(2) of the Act was submitted to the Collector, Hyderabad District for approval in Lr.No.A2/251/89, dated 9-6-1993. The Collector, Hyderabad District in Memo No.d3/4157/93 dated 2-7-1993 had approved the draft notification to an extent of 160.26 sq. yards in P.No.5-9-324 to 326. The notification under Section 4(1) of the Act was also published in A.P. Gazette No.21, dated 8-10-1993 and the substance of the notification was also published in two local news papers i.e., in Pledge on 15-11-1993 and in Eenadu Telugu daily on 16-11-1993 and the enquiry notice under Section 5-A of the Act in Form-3 was issued on 16-12-1993 fixing the date of enquiry on 30-12-1993 while serving the notice along with A.P. Gazette copy to the writ petitioner on 20-12-1993. Since the enquiry was not conducted, it was adjourned to 22-3-1994 while giving notice to the writ petitioner on 9-3-1994 but no person turned up in the enquiry in spite of serving notices and hence the enquiry under Section 5-A of the Act was concluded on 25-5-1994. It was further stated that the draft declaration proposal under Section 6 of the Act was submitted to the Collector in Lr.No.A2/251/89 dated 26-5-1994 and the same was approved in Memo No.D3/4157/93 dated 14-7-1994. The draft declaration was published in A.P. Gazette No.76 dated 1-8-1994 and

also in two local news papers i.e., in Citizen on 2-2-1995 and in Andhra Bhoomi on 2-2-1995 as laid down under sub-section (2) of Section 6 of the Act. The award enquiry notice under Section 9(1) and 10 of the Act was issued on 9-8-1995 and the award enquiry was conducted on 22-8-1995, 13-11-1995, 27-12-1996 and 21-1-1997. The writ petitioner had filed claim petition on 11-10-1995 requesting to pay the land value @ Rs.15,000/- per sq. yard and Rs.2,50,000/- for compound wall and Rs.1,00,000/- for platform and Rs.4,00,000/- for the financial loss for removal of the platform. The notices under Sections 9(1) and 10 of the Act were served to the Counsel for the writ petitioner on 17-8-1995 and on 11-12-1996 to the writ petitioner and to Chermas Private Limited on 19-12-1995. A final notice was issued on 18-1-1997 and served on the land owner and Chermas Private Limited informing that consent award under Section 11(2) of the Act is proposed to be passed and they were requested to be present on 22-1-1997 with documentary evidence to put their claim and title over the land. In the notice it was also informed that the award will be passed on the material available in the office and the land owner did not turn up on 22-1-1997 and M/s. Chermas Ltd. filed vakalat on 22-1-1997 and remained silent since then. In order to fix the land value the sale statistics from the concerned Sub-Registrar office were obtained for the sales that took place in the vicinity of the acquired land and a land value of Rs.2000/- per sq. yard was fixed

and the preliminary valuation was prepared and submitted to the Collector, Hyderabad District for approval in Lr.No.B/251/89 dated 21-12-1996. The Collector, Hyderabad District in P.V. Inspection Note dated 17-1-1997 had permitted to pass the consent award but the land owners were not present to represent the claim on 22-1-1997 in regard to passing of consent award in spite of serving notices and hence the office had no other go but to pass the award under Section 30 of the Act on the material available and deposited the compensation of Rs.5,79,379/- on 2-5-1997.

6. It was further stated that the land acquisition proceedings were initiated by the 2nd respondent to acquire an extent of 160-26 sq. yards of land for road widening in H.No.5-9-324 to 326 correlating to T.S.Nos.43 and 45, Ward 51, Block-F of Nampally village. The land acquisition proceedings are in accordance with the Act and the Amendment Act of 1984 and there is no violation of Sections 4, 5 and 11 of the Act as alleged by the writ petitioner. It was further stated that at the first instance the draft notification under Section 4(1) of the Act was published in A.P. Gazette on 17-6-1990. The draft declaration under Section 6 of the Act was published on 28-10-1990 within the stipulated period of one year of publication of draft notification under Section 4(1) of the Act but the draft declaration under Section 6 of the Act had lapsed on 4-1-1990 due to not passing of award within the

stipulated period as per the Act as detailed plan could not be provided by the requisitioning Department in time to the Executive Engineer, Roads and Buildings for assessing the structural valuation of the affected structure. The requisitioning Department by the letter dated 16-1-1993 was informed that the draft declaration had lapsed and requested to inform whether the land is still needed for road widening or not and the requisitioning Department in Lr.No.MCH/EE/PD.IV/93 dated Nil, which was received on 5-6-1993 had informed that the land is still required. It was further stated that a fresh draft declaration proposal under Section 4(1) of the Act was submitted to the Collector, Hyderabad District for approval in Lr.No.A2/251/89 dated 9-5-1993. The Collector, Hyderabad District in Memo No.D3/4157/93 dated 2-7-1993 had approved the draft notification to an extent of 160.26 sq. yards in P.No.5-9-324 to 326. Thereafter the notification under Section 4(1) was also published in the A.P. Gazette Part I, No.21 dated 8-10-1993. The substance of Section 4(1) of the notification was also published in two local news papers i.e., in Pledge, an English daily on 15-11-1993 and in Eenadu Telugu daily on 16-11-1993. The substance of Section 4(1) notification was displayed on 11-11-1993 on H.No.5-9-324 to 326 as the owner was not present in the house. The substance of the notification under Section 4(1) of the Act was also displayed on the notice board of the office of the Collector, Hyderabad District,

concerned M.R.O's office and Police Station at Abids. The draft declaration proposal under Section 6 of the Act was submitted to the Collector, Hyderabad District in Lr.No.A2/251/89 dated 26-5-1994 and the same was approved in Memo No.D3/4157/93 dated 14-7-1994. The draft declaration was published in A.P. Gazette No.76 dated 1-8-1994 and also in two local news papers in Citizen evening on 2-2-1995 and Andhra Bhoomi on 2-2-1995. The date of publication had been reckoned on 2-2-1995 as laid down under sub-section (2) of Section 6 of the Act. It was further submitted that the draft notification under Section 4(1) of the Act was published in Gazette No.21, dated 8-10-1993 and the same was published in two local News papers in Pledge, an English daily on 15-11-1993 and in Eenadu Telugu daily on 16-11-1993. The draft declaration under Section 6 of the Act was published in A.P. Gazette No.76 dated 1-8-1994 and the same was also published in two local news papers in Andhra Bhoomi, a Telugu daily on 2-2-1995 and in Citizen Evening on 2-2-1995. The date of publication had been reckoned on 2-2-1995 as laid down under sub-section (2) of Section 6 of the Act and hence there was no lapse on the part of the 2nd respondent as the draft declaration was published in A.P. Gazette on 1-8-1994 and is well within the statutory time limit. It was further stated that the District Collector, Hyderabad is delegated with powers to prove draft notification and draft declaration by G.O.Ms.No.713, dated 30-4-1982

of Revenue Department on behalf of Government and hence the action of the 1st respondent in approving the draft notification and the draft declaration is in order and no further orders of Government are required. It was also further stated that the notice under Sections 9(1), 9(3) and 10 of the Act had been issued simultaneously on 9-8-1995 and not on 15-7-1995 as stated in the affidavit fixing the date of enquiry on 22-8-1995 and served to the Advocate of the writ petitioner on 17-8-1995. In response to the above notice the writ petitioner had filed a claim petition on 11-10-1995 requesting to pay land value at Rs.15,000/- per sq. yard and Rs.2,50,000/- to the compound wall and Rs.1,00,000/- for the platform and Rs.4,00,000/- for financial loss on removal of the platform. It is stated that it is not true to mention that no notice was issued to the writ petitioner till 18-1-1997 and in fact a second notice was issued to the land owner on 16-12-1996 and was served on the writ petitioner on 21-12-1996 and M/s. Chermas Exquisite on 19-12-1996 fixing the date of enquiry on 27-12-1996 but no body appeared to put forth their claim interest with documentary proof. The District Collector, Hyderabad inspected the site on 16-1-1997 and directed the 2nd respondent to negotiate with the land owner so as to pass consent award under Section 11(2) of the Act. Accordingly a notice was issued on 18-1-1997 to the land owner and Chermas Exquisite and served on 20-1-1997. In the said notice the land owner was clearly informed that the award enquiry is

finally posted to 22-1-1997 and also that the consent award under Section 11(2) of the Act was proposed to be passed and they were requested to be present on 22-1-1997 with documentary evidence to put forth their claims of interest and title over the land, failing which the award will be passed on the material available in the office. In response to the said notice M/s. Chermas Exquisite Limited filed vakalat on 22-1-1997 and remained silent since then. The Chermas Exquisite Limited filed an undertaking on 31-1-1997 stating that they are the owners of H.No.5-9-5 & 6 and are ready to handover the possession of the land and existing structure proposed to be acquired shall be surrendered to the M.C.H. free of cost on sanction of building permission. It was stated that even after serving the final notice on 20-1-1997 the writ petitioner did not turn up till 31-1-1997 and finally an award under Section 30 of the Act was passed on 31-1-1997 fixing the land value @ Rs.2000/- per sq. yard and referred the matter to the Chief Judge, City Civil Court, Hyderabad in Lr.No.18/251/89 dated 2-5-1997 along with compensation amount of Rs.5,79,378/-. The petition under Section 18 of the Act filed by the writ petitioner on 28-4-1997 was also sent to the Chief Judge, City Civil Court, Hyderabad for adjudication in Lr.No.B/251/89 dated 2-5-1997. The award dated 31-1-1997 had not lapsed due to the reasons that the notification under Section 4(1) was published in official Gazette No.21 on 8-10-1993 and the draft declaration under Section

6 of the Act was published in official Gazette No.76 on 1-8-1994 which is well within the one year period. The award also was passed well within the time of two years on 31-1-1997 and the publication under Section 6 of the Act was reckoned as 2-2-1995 and as such notifications issued under Sections 4(1) and 6 of the Act are legal and valid and award had been passed within the time under Section 11-A of the Act and as such it is valid. It was further averred that a notice under Section 12(2) of the Act was also served on the writ petitioner informing the award passed under Section 30 of the Act and the allegation of the petitioner of ante-dating the award is false and baseless. It was further stated that the award enquiry was conducted on 22-8-1995, 16-12-1996 and finally on 22-1-1997 and every time notice was served to the writ petitioner. The writ petitioner except filing a claim petition on 11-10-1995 had not submitted title deeds and was prolonging the case in order to get it lapsed and final notice dated 18-1-1997 clearly stated that the award will be passed on the material available, but the petitioner did not attend the enquiry on 22-1-1997 also. It was further submitted that preliminary valuation statement was prepared taking into account the true sale transaction that took place in the vicinity of the acquired land for the period preceding three years from the date of publication of draft notification and land value of Rs.2000/- is proposed and sent to the Collector, Hyderabad District for approval vide Lr.B/251/89, dated 21-12-1996.

The Collector, Hyderabad District inspected the sale lands on 16-1-1997 and approved the preliminary valuation on 17-1-1997 and permitted to pass the consent award to the extent possible and the award was to be finally passed on 31-1-1997 as the petitioner did not turn up to attend the enquiry on 22-1-1997even though the notice was served on 18-1-1997. The other allegations also had been denied and it is stated that the award enquiry was started on 22-8-1995 and concluded on 22-1-1997. It was further stated that the writ petitioner except filing the claim petition on 22-10-1995 did not attend the award enquiry on 16-12-1996 and 12-1-1997 nor submitted any title deeds to prove his ownership over the acquired land and the writ petitioner did not attend the enquiry and the allegation that the 2nd respondent conducted belief enquiry had been denied as wrong, baseless and imaginary. The preliminary valuation statement was prepared and submitted to the Collector, Hyderabad District on 21-12-1996 and the Collector, Hyderabad District inspected the sites on 16-1-1997 and approved the preliminary valuation statement on 17-1-1997 which is entirely an administrative matter and got a statutory formality. The award was passed on 31-1-1997 and the same is according to the Act. The Collector, Hyderabad District had approved the preliminary valuation statement on 17-1-1997 and simultaneously permitted the 2nd respondent to pass the award. The other allegations also had been denied and a specific stand was taken that

the formalities under Section 30 of the Act had been completed and award under Section 30 of the Act had been passed on 31-1-1997 due to non-submission of title deeds by the writ petitioner and referred the award to the Chief Judge, City Civil Court, Hyderabad along with the compensation amount of Rs.5,79,379/- by Lr.No.B/251/89, dated 2-5-1997 for adjudication and payment of compensation amount to the rightful owner. The last publication of draft declaration under Section 6 of the Act was 2-2-1995 and the award was passed on 3-1-1997 which is well within the statutory period of two years from the last date of draft declaration. Therefore, there is no arbitrary action or violation of the Act. The petition filed under Section 18 of the Act by the writ petitioner on 28-4-1997 had been submitted to the Chief Judge, City Civil Court, Hyderabad for adjudication by Lr.No.E/251/89 dated 2-5-1997. It was further averred that the possession of the land in question is not taken yet and the proceedings had been initiated under the Act and the Amendment Act and there is no violation of the provisions of the Act at any stage and the same is legal and hence questioning of the notification issued under Section 4(1) Act and declaration under Section 6 of the Act and the award itself at this belated stage cannot be sustained. It was also stated that the view of the writ petitioner is to delay the proceedings.

7. Sri Ravinder Rao, the learned Counsel representing the writ petitioner had given up the ground of incompetency in the issuance of notification under Section 4(1) of the Act but however had stressed on the ground of failure to publish the draft declaration under Section 6 of the Act within one year which is mandatory and also commented that from the facts and circumstances and also from the record available necessarily it should be taken that the award is an ante-dated one and even otherwise no prior approval of the appropriate Government as per Section 11 of the Act had been obtained. The Counsel also made elaborate submissions how to reckon the date in computing the period in relation to the date of publication under Section 6 of the Act. The learned Counsel also had drawn the attention of this Court to the internal correspondence and also Sections 4, 6, 11, 11(a) and 12(2) of the Act.

8. On the contrary, the learned Government Pleader for Land Acquisition had taken this Court through the counter affidavit and had explained that the date of publication to be reckoned from 2-2-1995 and hence the same is within time and there is no contravention of Section 11 of the Act and only with a view to delay the land acquisition proceedings further the writ petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

9. Heard the Counsel.

10. As can be seen from the respective pleadings of the parties, the notification issued under Section 4(1) of the Act initially had lapsed due to non-taking of the steps yet another fresh notification dated 18-10-1993 under Section 4(1) of the Act had been issued and the publication thereof had been made on 15-11-1993 and 16-11-1993. The specific stand taken in the counter affidavit is that on receipt of the letter for fresh draft notification the same was submitted to the Collector, Hyderabad District for approval in Lr.No.N1.A2/251/89 dated 9-6-1993 and the Collector, Hyderabad District in Memo No.D3/4157/93 dated 2-7-1993 had approved the draft notification to an extent of 160.26 sq. yards in P.No.5-9-324 to 326 and thereafter the notification Section 4(1) of the Act was published in A.P. Gazette No.21 dated 8-10-1993 and the substance of the notification under Section 4(1) of the Act was also published in two local news papers in Pledge, an English Daily on 15-10-1993 and Eenadu Telugu Daily on 16-11-1993 and the draft declaration was submitted to the Collector on 26-5-1994 and the same was approved on 14-7-1994 and the draft declaration was published in the A.P. Gazette on 1-8-1994 and also in two local news papers i.e., in Citizen on 2-2-1995, and in Andhra Bhoomi on 2-2-1995 as laid down by Section 6(2) of the Act. The last date of publication of the notification under Section 4(1) of the Act was 16-11-1993 in Eenadu newapaper and the last date of publication of declaration under Section 6 of the Act was 2-2-

1995, published in Citizen and Andhra Bhoomi. There cannot be any doubt or controversy that on a careful scrutiny of the respective pleadings of the parties the same is beyond one year. Section 6 of the Act dealing with the **Declaration that land is required for a public purpose** reads as hereunder :

> (1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorized to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1) :
>
> Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.
>
> Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1):-
>
> i. published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land Acquisition (Amendment) Act, 1894, shall be made after the expiry of one year from the date of the publication of the notification.
>
> ii. Published after the commencement of the Land Acquisition (Amendment) Act 1894, shall be made after the expiry of one year from the date of publication of the notification.
>
> Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1: In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2 : Where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the Official Gazette or the District Gazette and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration) and such declaration shall state the district or the other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose specified in sub-section (1) or for a company as the case may be; and, after making such declaration, the appropriate Government or the District Collector may acquire the land in a manner hereinafter appearing."

Clauses (i) and (ii) of the proviso to sub-section (1) of Section 6 of the Act clearly specifies a period of one year and the words in sub-section (2) of Section 6 "….the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration…" also would assume some importance in reckoning the period. I n **URBAN IMPROVEMENT TRUST Vs. BHERU LAL** it was held that from the different

phraseology used in Sections 4(1) and 6(1), it is apparent that under Section 4(1) publication of the notification in the official Gazette is a condition precedent for acquiring the land. In **RAGHUNATH Vs. STATE OF MAHARASHTRA** it was held that in respect of the lands covered by the first notification which are also covered or comprised of the second notification, the further proceedings regarding acquisition should be taken only in pursuance of the later notification and the proceedings initiated by the first notification should be deemed to have been superceded. In **S.RAMANUJULU Vs. LAND ACQUISITION OFFICER** it was held that the subsequent notification shall be taken as the date of acquisition of land as earlier notification is superceded by the later one. In **B.S.H. RANGAPPA Vs. STATE OF KARNATAKA** it was held that the words “publish” and “from the date of publication of the notification” occurring in Section 6(1)(ii) of the Act refer to the publication of notification under Section 4 of the Act and have no reference to the publication of any notification under Section 6 and it is pertinent to note that Section 6(2) does not prescribe any time limit within which the declaration made under Section 6(1) of the Act is to be published. Hence, in the light of the respective stands taken by the parties, it is clear that the declaration under Section 6 of the Act was made beyond time. No doubt submissions at length also had been made that in the facts and circumstances, this Court may have to arrive at an inevitable

conclusion that the award itself is an ante-dated one. In the facts and circumstances of the case, this Court is of the considered opinion that as far as the ground raised, relating to non-compliance of the provisions of Section 6 of the Act are concerned, the writ petitioner is bound to succeed.

11. Apart from this aspect of the matter, several other submissions relating to enquiry made regarding yet another party i.e., M/s. Chermas also had been canvassed. The same need not be discussed in detail since the said party is a non-party to the present litigation.

12. Section 11 of the Act dealing with **Enquiry and award by Collector** reads as hereunder :

> (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements, made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of --
>
> i. the true area of the land;
>
> ii. the compensation which in his opinion should be allowed for the land; and
>
> iii. the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf.

Provided further that it shall be competent for appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1) if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way effect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act."

The second proviso to sub-section (1) of Section 11, inserted by Act 68 of 1894, specifies :

"Provided further that it shall be competent for appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf."

On the strength of the material placed before this Court, submissions at length were made that no approval as required by the proviso to sub-section (1) of Section 11, inserted by Act 68 of 1894 had been

obtained and hence the land acquisition proceedings are vitiated. In the records produced, at page 557, Lr.No.B/251/89 dated 21-12-1996 addressed by Special Deputy Collector, Land Acquisition Officer, M.C.H. Hyderabad to the District Collector, Hyderabad District, reads :

GOVERNMENT OF ANDHRA PRADESH

REVENUE DEPARTMENT

B/251/89 Dated 21-12-1996

From: To

M.Vishwanatham, The District Collector,

Special Dy. Collector, Hyderabad District.

Land Acquisition Officer,

M.C.H. Hyderabad.

Sir,

Sub:- LA MCH – Acquisition of land for road widening at P.No.5-9-324 to 326, extent 160.44 sq. yards in Nampally vg, Musheerabad belongs to Mrs. A.D. Mistry – P.V. Statement – Submitted.

Ref:- E.E. P.D. VI MCH Lr.No.EE/PD-VI/MCH/89/421 dt.22-5-1989.

"I submit that the Executive Engineer, P.D.VI vide his reference cited above had furnished a requisition to acquire an extent of 160.44 sq. yards of land out of premises No.5-9-324 to 326 situated at Gunfoundry in Nampally village, Musheerabad Mandal for the purpose of road widening. As per the sub-

division record, an extent of 160.26 sq. yards is affected out of premises No.5-9-324 to 326. After publication of D.N. & D.D. the case was lapsed due to non-receipt of structural valuation from the Executive Engineer, R & B.

Again this office had addressed the E.E. M.C.H. P.B. 6 to intimate whether the land in question is still required or not. After receipt of consent from E.E. P.D. VI on 4-6-1993 again D.N. & D.D. have been published in A.P. Gazette. In order to assess the market value of the land under acquisition, the sale transactions that took place in the vicinity have been gathered and preliminary valuation is worked out. I submit herewith the P.V. Notes together with tope sketch, list of sales and P.V. statements in duplicate for a sum of Rs.4,16,676-00 (Four lakhs sixteen thousand six hundred and seventy six only) in duplicate. I request the District Collector kindly to communicate approval of the P.V. statement.

Yours faithfully,

Sd/-

Special Deputy Collector,

Land Acquisition,

M.C.H. Hyderabad.

The letter addressed by the Special Deputy Collector, Land Acquisition, MCH, Hyderabad to the District Collector, Hyderabad dated 31-1-1997 reads :

GOVERNMENT OF ANDHRA PRADESH

REVENUE DEPARTMENT

From To

M.Vishwanatham, The District Collector,

Special Dy. Collector, Hyderabad.

Land Acquisition,

MCH, Hyderabad.

Lr.No.A/251/89 Dated : 31-1-1997

Sir,

Sub:- LA – MCH – Acquisition of land at Premises No.5-9-324 to 326 – Nampally (vg) – Opp. to Gunfoundry, Hyderabad – Approval of P.V. Statement and passing of award – Regarding.

Ref:- This office Lr.No.B/251/89, dt.21-12-96.

…

I invite kind attention to this office reference cited. In compliance to Collectors instructions dated 16-1-1997 I have issued a notice to the Land Owners informing them that consent Award U/s.1192) of L.A.Act is proposed to be passed in this case and they are requested to attend office of the Special Deputy Collector, Land Acquisition, MCH on 22-1-1997 at 11 AM to negotiate the land rate so that the consent Award U/s.11(2) of L.A. Act could be passed. I have also addressed the Requisitioning Department to participate in the negotiations. One of the land owners M/s. Chermas Exquisite have appeared today and filed an agreement bond on stamped paper worth Rs.20/- requisitioning to renew his building permission granted in 1988 and in lieu of it he offered to hand over the land under acquisition free of cost in favour of MCH. Since the matter pertains to Town Planning I have brought the matter to the notice of the Chief City Planner and the Commissioner, MHC. The matter was examined by the

Chief City Planner and Commissioner, MCH and asked me to pass award as building permission is not possible at this stage.

In view of the above circumstances I am submitting the Draft Award and request the Collector, Hyderabad kindly to approve the P.V.S. already submitted as well as the draft award now submitted.

In this regard the D.D. is getting lapsed on 2-2-1997 and I have to pass the award on 1-2-1997 without fail. Hence I request the Collector kindly to approve the Award and communicate the same to this office early.

Yours faithfully,

Sd/-

Spl. Dy. Collector,

L.A. MCH, Hyderabad.

On a careful reading of the proviso, the same specifies that it shall be competent for appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf. In **RAMESH DUTTA Vs. STATE OF PUNJAB AND OTHERS** the Apex Court while dealing with Section 11(1) and Section 17 of the Act observed that the approval as specified by proviso to Section 11(1) of the Act would be necessary even in cases where Section 17 of the Act had been invoked. The language of the proviso already had been referred to supra, but however in view of the fact that a particular procedure had been specified the same may have to be followed

despite the fact that the word “may” has been used in the said proviso. On this ground also the writ petitioner is bound to succeed for not taking the approval from the Government before passing the award.

13. Right to Property, though no longer a fundamental right, is an enforceable legal right. Compulsory acquisition for public purpose no doubt is important. Equally when a citizen is deprived of his property even on payment of compensation, the procedure specified under the provisions of the Act are to be adhered to. Such provisions require strict construction and interpretation. In this case, there is a clear contravention of the provisions Sections 6 and 11 of the Act and hence the land acquisition proceedings cannot be sustained. For the reasons referred to supra, the writ petitioner is bound to succeed and accordingly the Writ Petition is hereby allowed. It is needless to say that this will not come in the way of the respondents in proceeding with the matter in accordance with law afresh, if they so require to do so. No order as to costs.

_____

Justice P.S.Narayana

Date : -3-2005

L.R. copy to be marked : YES / NO

AM

Rule Nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Third day of March Two Thousand and Five.

ASSISTANT REGISTRAR

To:

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 District Collector,
Nampally Road, Hyderabad.
2 Special Deputy Collector, Land Acquisition M.C.H.,
Municipal Corporation Offic, Lower Tank Bund Road,
Hyderabad.

3. C.Cs. to Government Pleader fro Land Acquisition,

High Court of Andhra Pradesh,

Hyderabad.

4. 8 L.R. copies

5. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High court

Buildings, Hyderabad.

7. Two C.D. copies

8) 1 CC to MR.RAVINDER RAO